

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 967

Introduced by Revenue Committee: Wickersham, 49, Chairperson;
Bohlke, 33; Coordsen, 32; Dierks, 40; Hartnett, 45;
Raikes, 25; Redfield, 12

Read first time January 5, 2000

Committee: Revenue

A BILL

1 FOR AN ACT relating to the Tax Equalization and Review Commission;
2 to amend section 77-5023, Revised Statutes Supplement,
3 1998, and sections 77-1504.01, 77-5016, and 77-5019,
4 Revised Statutes Supplement, 1999; to change powers for
5 adjusting the valuation of classes and subclasses of
6 property; to change powers and duties concerning
7 hearings, orders, and appeals; to provide for
8 applicability of changes; to harmonize provisions; and to
9 repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-1504.01, Revised Statutes
2 Supplement, 1999, is amended to read:

3 77-1504.01. (1) After completion of its actions and
4 based upon the hearings conducted pursuant to sections 77-1502 and
5 77-1504, a county board of equalization may petition the Tax
6 Equalization and Review Commission to consider an adjustment to a
7 class or subclass of real property within the county. Petitions
8 must be filed with the commission on or before July 26.

9 (2) The commission shall hear and take action on a
10 petition filed by a county board of equalization on or before
11 August 10. ~~The commission, in issuing such an order to adjust a~~
12 ~~class or subclass, may exclude individual properties from that~~
13 ~~order whose value has already been adjusted by a county board of~~
14 ~~equalization in the same manner as the commission directs in its~~
15 ~~order. In implementing the order of the commission, the county~~
16 ~~assessor shall adjust the values of the class or subclass that is~~
17 ~~the subject of the order. For properties that have already~~
18 ~~received an adjustment from the county board of equalization, no~~
19 ~~additional adjustment may be made applying the commission's order,~~
20 ~~but such an exclusion from the commission's order shall not~~
21 ~~preclude adjustments to those properties for corrections or~~
22 ~~omissions.~~ Hearings held pursuant to this section may be held by
23 means of videoconference and shall comply with section 84-1411,
24 except that a member of the commission need not be present at each
25 videoconference site. A duly appointed representative of the
26 commission shall be present at each videoconference site to take
27 custody of any exhibits and keep a record of persons who appear at
28 the hearing. Hearings conducted pursuant to this section shall be

1 in the manner prescribed in section 77-5026. The burden of proof
2 is on the petitioning county to show that failure to make an
3 adjustment would result in values that are not equitable and in
4 accordance with the law.

5 (3) After a hearing the commission shall enter its order
6 based on information presented to it at the hearing. The order
7 shall specify the percentage increase or decrease and the class or
8 subclass of real property affected or any corrections or
9 adjustments to be made to the class or subclass of real property
10 affected. When issuing an order to adjust a class or subclass of
11 real property, the commission may exclude individual properties
12 from that order whose value has already been adjusted by a county
13 board of equalization in the same manner as the commission directs
14 in its order. On or before August 10 of each year, the commission
15 shall send its order by certified mail to the county assessor and
16 by regular mail to the county clerk and chairperson of the county
17 board.

18 (4) The county assessor shall make the specified changes
19 to each item of property in the county as directed by the order of
20 the commission. In implementing such order, the county assessor
21 shall adjust the values of the class or subclass that is the
22 subject of the order. For properties that have already received an
23 adjustment from the county board of equalization, no additional
24 adjustment shall be made applying the commission's order, but such
25 an exclusion from the commission's order shall not preclude
26 adjustments to those properties for corrections or omissions. The
27 county assessor of the county adjusted by an order of the
28 commission shall recertify the abstract of assessment to the

1 Property Tax Administrator on or before August 20.

2 Sec. 2. Section 77-5016, Revised Statutes Supplement,
3 1999, is amended to read:

4 77-5016. All cases appealed to the commission shall be
5 granted an informal hearing unless a formal hearing is granted as
6 determined by the commission according to its rules and
7 regulations. In cases appealed to the commission:

8 (1) The commission may admit and give probative effect to
9 evidence which possesses probative value commonly accepted by
10 reasonably prudent persons in the conduct of their affairs. It
11 shall give effect to the rules of privilege recognized by law. It
12 may exclude incompetent, irrelevant, immaterial, and unduly
13 repetitious evidence. ~~Any party to a formal hearing before the~~
14 ~~commission, from which a decision may be appealed to the courts of~~
15 ~~this state, may request that the commission be bound by the rules~~
16 ~~of evidence applicable in district court by delivering to the~~
17 ~~commission at least three days prior to the holding of the hearing~~
18 ~~a written request. Any party to an appeal filed under section~~
19 ~~77-5007 may request a formal hearing by delivering a written~~
20 ~~request to the commission not more than thirty days after the~~
21 ~~appeal is filed.~~ The request shall include the requesting party's
22 agreement to be liable for the payment of costs incurred and upon
23 any appeal or review, including the cost of court reporting
24 services which the requesting party shall procure for the hearing.
25 The commission shall be bound by the rules of evidence applicable
26 in district court in any formal hearing held by the commission.
27 All costs of a formal hearing shall be paid by the party or parties
28 against whom a final decision is rendered;

1 (2) The commission may administer oaths, issue subpoenas,
2 compel the attendance of witnesses and the production of any
3 papers, books, accounts, documents, statistical analysis, and
4 testimony, and cause the depositions of witnesses residing either
5 within or without the state to be taken in the manner prescribed by
6 law for taking depositions in civil actions in the district court;

7 (3) All evidence including records and documents in the
8 possession of the commission of which it desires to avail itself
9 shall be offered and made a part of the record in the case. No
10 other factual information or evidence shall be considered in the
11 determination of the case. Documentary evidence may be received in
12 the form of copies or excerpts or by incorporation by reference;

13 (4) Every party shall have the right of cross-examination
14 of witnesses who testify and shall have the right to submit
15 rebuttal evidence;

16 (5) The commission may take notice of judicially
17 cognizable facts and in addition may take notice of general,
18 technical, or scientific facts within its specialized knowledge or
19 statistical information regarding general levels of assessment
20 within a county or a class or subclass of property within a county
21 and measures of central tendency within such county or classes or
22 subclasses within such county which have been made known to the
23 commission. Parties shall be notified either before or during the
24 hearing or by reference in preliminary reports or otherwise of the
25 material so noticed. They shall be afforded an opportunity to
26 contest the facts so noticed. The commission may utilize its
27 experience, technical competence, and specialized knowledge in the
28 evaluation of the evidence presented to it;

1 (6) Any person testifying under oath at a hearing who
2 knowingly and intentionally makes a false statement to the
3 commission or its designee is guilty of perjury. For the purpose
4 of this section, perjury is a Class I misdemeanor; and

5 (7) The commission shall hear appeals and cross appeals
6 taken under section 77-5007 as in equity and without a jury and
7 determine de novo all questions raised before the county board of
8 equalization or the Property Tax Administrator which relate to the
9 liability of the property to assessment or the amount thereof. The
10 commission shall affirm the action taken by the board or Property
11 Tax Administrator unless evidence is adduced establishing that the
12 action of the board or the Property Tax Administrator was
13 unreasonable or arbitrary. Any decision rendered by the commission
14 shall be certified to the parties and, if applicable, to the county
15 treasurer and the official charged with the duty of preparing the
16 tax list. When such decision becomes final, any officials shall
17 correct their records accordingly.

18 Sec. 3. Section 77-5019, Revised Statutes Supplement,
19 1999, is amended to read:

20 77-5019. (1) Any party aggrieved by a final decision in
21 a case appealed to the commission and any county or other political
22 subdivision aggrieved by an order of the commission issued pursuant
23 to section 77-1504.01 or 77-5028 shall be entitled to judicial
24 review in the Court of Appeals. Nothing in this section shall be
25 deemed to prevent resort to other means of review, redress, or
26 relief provided by law.

27 (2)(a) Proceedings for review shall be instituted by
28 filing a petition in the Court of Appeals within thirty days after

1 the date on which a final appealable order is entered by the
2 commission. All parties of record shall be made parties to the
3 proceedings for review. ~~If the commission's only role in a case is~~
4 ~~to act as a neutral factfinding body, the commission shall not be a~~
5 ~~party of record. In all other cases, the commission shall be a~~
6 ~~party of record.~~ The commission shall only be made a party of
7 record if the action complained of is an order issued by the
8 commission pursuant to section 77-1504.01 or 77-5023. Summons
9 shall be served within thirty days after the filing of the petition
10 in the manner provided for service of a summons in section
11 25-510.02. If the commission is not a party of record, the
12 petitioner shall serve a copy of the petition and a request for
13 preparation of the official record upon the commission within
14 thirty days after the filing of the petition. The court, in its
15 discretion, may permit other interested persons to intervene.

16 (b) A petition for review shall set forth: (i) The name
17 and mailing address of the petitioner; (ii) the name and mailing
18 address of the county whose action is at issue or the commission;
19 (iii) identification of the final decision at issue together with a
20 duplicate copy of the final decision; (iv) the identification of
21 the parties in the case that led to the final decision; (v) the
22 facts to demonstrate proper venue; (vi) the petitioner's reasons
23 for believing that relief should be granted; and (vii) a request
24 for relief, specifying the type and extent of the relief requested.

25 (3) The filing of the petition or the service of summons
26 upon the commission shall not stay enforcement of a decision. The
27 commission may order a stay. The court may order a stay after
28 notice of the application for the stay to the commission and to all

1 parties of record. If the commission has found that its action on
2 an application for stay or other temporary remedies is justified to
3 protect against a substantial threat to the public health, safety,
4 or welfare, the court may not grant relief unless the court finds
5 that: (a) The applicant is likely to prevail when the court finally
6 disposes of the matter; (b) without relief, the applicant will
7 suffer irreparable injuries; (c) the grant of relief to the
8 applicant will not substantially harm other parties to the
9 proceedings; and (d) the threat to the public health, safety, or
10 welfare relied on by the commission is not sufficiently serious to
11 justify the commission's action in the circumstances. The court
12 may require the party requesting the stay to give bond in such
13 amount and conditioned as the court directs.

14 (4) Within thirty days after service of the petition or
15 within such further time as the court for good cause shown allows,
16 the commission shall prepare and transmit to the court a certified
17 copy of the official record of the proceedings had before the
18 commission. The official record shall include: (a) Notice of all
19 proceedings; (b) any pleadings, motions, requests, preliminary or
20 intermediate rulings and orders, and similar correspondence to or
21 from the commission pertaining to the case; (c) the transcribed
22 record of the hearing before the commission, including all exhibits
23 and evidence introduced during the hearing, a statement of matters
24 officially noticed by the commission during the proceeding, and all
25 proffers of proof and objections and rulings thereon; and (d) the
26 final order appealed from. The commission shall charge the
27 petitioner with the reasonable direct cost or require the
28 petitioner to pay the cost for preparing the official record for

1 transmittal to the court in all cases except when the petitioner is
2 not required to pay a filing fee. The commission may require
3 payment or bond prior to the transmittal of the record.

4 (5) The review shall be conducted by the court for error
5 on the record of the commission. If the court determines that the
6 interest of justice would be served by the resolution of any other
7 issue not raised before the commission, the court may remand the
8 case to the commission for further proceedings. The court may
9 affirm, reverse, or modify the decision of the commission or remand
10 the case for further proceedings.

11 (6) Appeals under this section shall be given precedence
12 over all civil cases.

13 Sec. 4. Section 77-5023, Revised Statutes Supplement,
14 1998, is amended to read:

15 77-5023. (1) Pursuant to section 77-5022, the commission
16 shall have the power to increase or decrease the value of a class
17 or subclass of real property of any county or tax district or real
18 property valued by the state so that all classes or subclasses of
19 real property in all counties fall within the acceptable range.

20 (2) Such increase or decrease shall be made by a
21 percentage and shall result in an average level of assessment for
22 the class or subclass adjusted at seventy-seven percent of actual
23 value for agricultural land and ninety-six percent of actual value
24 for nonagricultural real property. If such increase or decrease is
25 made to a subclass of real property, the increase or decrease shall
26 also cause the average level of assessment for the class from which
27 the subclass is drawn to fall within the acceptable range.

28 (3) For agricultural land, the acceptable range shall be

1 from seventy-four percent to eighty percent of actual value of
2 agricultural land; and for nonagricultural real property, the
3 acceptable range shall be from ninety-two percent to one hundred
4 percent of actual value of nonagricultural real property. ~~Such~~
5 ~~increase or decrease shall be made by a percentage and shall result~~
6 ~~in an average level of assessment for the class or subclass~~
7 ~~adjusted at seventy-seven percent of actual value for agricultural~~
8 ~~land and ninety-six percent of actual value for nonagricultural~~
9 ~~real property.~~

10 Sec. 5. The changes made in sections 77-1504.01,
11 77-5016, 77-5019, and 77-5023 by this legislative bill shall become
12 operative for all actions filed with the Tax Equalization and
13 Review Commission on or after the effective date of this act.

14 Sec. 6. Original section 77-5023, Revised Statutes
15 Supplement, 1998, and sections 77-1504.01, 77-5016, and 77-5019,
16 Revised Statutes Supplement, 1999, are repealed.